IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

S.T.R. No. 45 of 2003
(Old No. 825 of 1991)

Date of decision :- 07-7-2006

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Date :- 07-7-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Sales Tax Revision No. 45 of 2003
{Old No. 825/1991}

The Commissioner,
Sales Tax
U.P. Lucknow ...Applicant/Revisionist

Versus

S/s United Traders Civil Lines
Rudrapur, Haldwani ... Respondent

Mr. Pitamber Maulkhi learned Addl. Advocate General for the revisionist.

Hon'ble J. C. S. Rawat, J.

1. This revision, preferred under section 11 of the U.P. Sales Tax Act, 1948, is directed against the judgment and order dated 20.03.1991, passed by the Sales Tax Tribunal, Haldwani.

2. Facts of the case are that the assessee is the dealer, who deals in the tractor and its parts at Rudrapur. The case pertains to the assessment year 1982-83. The taxable turnover as admitted by the dealer for the year under consideration, was Rs.30,64,205.33, which was rejected and an inspection of the said firm was made. After completing the inspection, no irregularities were found but certain documents and accounts books of the assessee were collected. It was revealed from the said documents that the assessee was obtaining form 32 from the farmers and was importing the tractors for the benefit of the farmers and was taking commission thereupon and as such he was evading the sales tax. The assessing authority fixed the tax upon the turnover of the assessee. Feeling aggrieved by this, the assessee preferred an

appeal under section 9 of the U.P. Sales Tax Act and the appeal was dismissed by the Assttt. Commissioner (Judicial), Sales Tax. Feeling aggrieved by the said order, the assessee again preferred an appeal before the Sales Tax Tribunal under section 10 of the Sales Tax Act. The learned Tribunal allowed the appeal holding that the assessee-dealer was not to pay any tax in respect of the imports made against form 32 for agriculturists. The Department preferred this revision before the Allahabad High Court in the year 1990 from where it has been received by transfer.

3. Heard Sri Pitamber Maulkhi learned Addl. Advocate General for the revisionist. None appeared for the assessee. I have gone through the record with the help of the learned Addl. Advocate General.

4. Vide order dated 04.03.2006, the present revision was admitted on the following question of law:

> *"Whether the facts and circumstances of the case, the Sales Tax Tribunal, has erred in law in holding that the dealer was not the importer of the tractor and the farmers have purchased the tractors directly after obtaining form32"*

5. It was contended on behalf of the revisionist that the Tribunal was not legally justified in ignoring the facts on record for example the documents seized by the assessing authority at the time of survey, especially letter nos.15 and 16 regarding the tractors not reaching within time for delivery, letter no.62 & 63 regarding losses on 5 tractors and letter no.82-83 regarding the dispatch of the tractors and to ensure that form 32 be made available at Delhi border. Perusal of the record reveals that he had written letters to the 'Mahendra & Co.' that the company

is not providing the tractors in the stipulated period and as such the assessee had to face difficulties and the company itself was getting bad name. It was further contended that the assessee had received the service commission on such tractors. This fact itself shows that the assessee was infact importing the tractors of the farmers on form 32 and selling the same tractors to the farmers and as such he was avoiding the sales tax illegally. It was further contended that 16 tractors, which had been brought by the farmers under form 32, was really imported by the assessee and after the import of these tractors the assessee sold these tractors to the farmers and thus the assessee had evaded the sales tax. It is admitted that the assessee is a dealer of the tractors and its parts at Rudrapur. The dealer imports the tractors and sold the same to the customers. It is not the case of the department that he had not imported and sold other tractors except the disputed tractors. In view of the above scenario the letters which have been indicated by the assessing authority, had to be examined. Letter which has been referred in the assessment order did not relate specifically to those 16 tractors which was imported by the farmers themselves. The letters only give an indication that he had written letter to the Mahendra with regard to the tractors and it has not been indicated that it pertains to aforesaid 16 tractors of the farmer. If the assessing authority had to verify this fact the assessing authority could have summoned the documents from Mahendra & Co. It would have been better course to the assessing authority to get it verified from the company itself. The farmers had obtained form 32 after due inquiry from the sales tax department. It is obligatory on the part of the Sales Tax Department before issuing form 32 to make an inquiry in this regard.

It is also pertinent to mention here that the farmers had directly got the money advanced to them on interest by the banks. The assessing authority had made the assessment only on the basis of presumption and surmises. The Tribunal was perfectly well within its jurisdiction to allow the appeal.

6. In view of the foregoing discussion, I am completely in agreement with the findings given by the Tribunal. The Tribunal has rightly held that the dealer was not the importer of the said 16 tractors of the farmers and the farmers had directly purchased the tractors from the Mahendra company after obtaining form 32. There is no error of law committed by learned Tribunal. As such, the revision is liable to be dismissed. Therefore, the revision is dismissed accordingly.

(J. C. S. Rawat, J.)

Dated 07.07.2006
LSR